The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEE BENZINGER, RICHARD J. FEIERTAG and JAISOOK RHO

Appeal No. 2005-0683
Application 09/586,550

ON BRIEF

Before JERRY SMITH, BARRETT and MacDONALD, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-7, 9, 11-17 and 19-23, which constitute all the claims remaining in the application.

The disclosed invention pertains to a computer method and apparatus for dynamic adaptation of a system in accordance with a contract with criteria associated therewith. More particularly, the claimed invention relates to adapting a security-related interaction between components of the system upon criteria of the contract not being met.

Representative claim 1 is reproduced as follows:

1. A method implemented using a computer for dynamic adaptation of a system in accordance with a contract with criteria associated therewith, comprising:

governing a security-related interaction between a plurality of components of the system utilizing the criteria of the contract, the components including an intrusion detection module which is subject to the governing;

determining whether the security-related interaction between the components of the system meets the criteria of the contract; and

adapting the security-related interaction between the components of the system upon the criteria of the contract not being met.

The examiner relies on the following references:

Bigus	5,745,652	Apr. 28, 1998
Webber, Jr. (Webber)	6,167,378	Dec. 26, 2000 (filed Jan. 21, 1997)

Claims 1-4, 6, 7, 9, 11-14, 16, 17 and 19-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Webber. Claims 5 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Webber in view of Bigus.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon supports each of the examiner's rejections. Accordingly, we affirm.

We consider first the rejection of claims 1-4, 6, 7, 9, 11-14, 16, 17 and 19-23 under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Webber. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Appellants have indicated that all these claims stand or fall together as a single group except for claims 21-23 which each stand separately [brief, page 4].

The examiner has indicated how he reads the claimed invention on the disclosure of Webber [answer, pages 3-5]. With respect to representative claim 1, appellants argue that although Webber discloses security-related activity, it fails to meet the governing step as recited in claim 1 including an intrusion detection module which is subject to the governing. Appellants assert that Webber fails to even suggest an intrusion detection

module, let alone a contract governed intrusion detection module [brief, pages 4-6]. The examiner responds that the communications and activity platform (CAP) of Webber is an intrusion detection module within the meaning of the claimed invention [answer, pages 6-7]. Appellants respond that the simple disclosure of a security-related module in Webber in no way meets the governing step of claim 1. Appellants assert that the encryption taught by Webber does not teach or suggest intrusion detection. They note that Webber may prevent intrusion, but Webber does not detect intrusions as claimed. Appellants also argue that even if the examiner's position were correct, the examiner has still failed to address the claim recitation of a contract-based security-related interaction among system components [reply brief, pages 1-4].

We will sustain the examiner's rejection of claims 1-4, 6, 7, 9, 11-14, 16, 17, 19 and 20. Although Webber relates to a network for the automated implementation of contracts, the contracts of Webber are not the type of contract recited in claim 1. Nevertheless, we agree with the examiner that the network operation in Webber is governed by a contract, or a set of rules, and that Webber broadly discloses an intrusion detection module as broadly recited in claim 1. Webber teaches

encryption or security 281 and 283, CAP 260 and firewalls. Each of these components is capable of detecting whether an intrusion has occurred. Webber discloses that the CAP should protect against entry of unauthorized adjustments [column 15, lines 36-38]. Since unauthorized adjustments represent one form of intrusion to a network, we find that Webber discloses the detection of an intrusion. Webber also discloses that the security-related interactions of the network components would be adjusted based upon such intrusion. We note that an intrusion represents the criteria of the contract, or set of rules, not being met. Appellants' broad assertions that Webber fails to teach an intrusion detection module fail to persuade us that the examiner's findings are erroneous because appellants offer no analysis in support of their broad assertions. A mere statement that an element is not disclosed within a prior art reference is insufficient to rebut a specific finding that identifies the element relied on to meet the claimed invention.

With respect to separately argued claim 21, appellants argue that Webber relates to commercial contracts and does not meet the claimed contract-governed security-related interaction among a plurality of intrusion detection modules and at least one firewall [brief, pages 6-8]. The examiner responds that Webber discloses a plurality of detection modules, encryption and security means as well as a firewall [answer, page 7]. Appellants respond that there is no disclosed interaction between the security means of Webber and the firewall, let alone contract-governed security-related interaction therebetween [reply brief, page 4].

We will sustain the examiner's rejection of claim 21. Appellants' broad assertions that claim 21 is not fully disclosed by Webber is insufficient to overcome the examiner's rejection. As noted above, Webber teaches encryption or security 281 and 283, CAP 260 and firewalls. Each of these components is capable of detecting whether an intrusion has occurred. Therefore, we agree with the examiner that Webber discloses a plurality of intrusion detection modules and at least one firewall. The firewall of Webber is governed by a contract, or set of rules, regarding operation within the network.

With respect to separately argued claim 22, appellants argue that the portion of Webber cited by the examiner fails to disclose or teach intrusion detection modules, let alone communicating information to the analysis module for detecting intrusions as claimed [brief, pages 8-9]. The examiner responds that Webber discloses intrusion detection modules as communicating information for detecting intrusion [answer, pages 7-8]. Appellants respond that since the examiner is relying on security means 281 and 283 to meet the claimed intrusion detection modules, there is no entity to meet the claimed analysis module for detecting intrusions with which the security means communicate [reply brief, pages 4-5].

We will sustain the examiner's rejection of claim 22. In addition to the comments made above, we find that Webber discloses an analysis module as represented by CAP 260. Appellants' broad assertion that Webber fails to fully disclose the invention of claim 22 fails to overcome the examiner's rejection.

With respect to separately argued claim 23, appellants argue that the portion of Webber cited by the examiner fails to disclose or teach generalized intrusion detection objects, as defined in the specification and claims, as being communicated to the analysis module for detecting intrusions [brief, page 9]. The examiner responds that Webber discloses data structures with information, and claim 23 fails to patentably distinguish over Webber [answer, page 8]. Appellants respond that Webber fails to meet the plain and ordinary meaning of the claimed generalized intrusion detection objects because Webber does not suggest intrusion detection [reply brief, page 5].

We will sustain the examiner's rejection of claim 23. Appellants' broad assertion that the portion of Webber relied on by the examiner fails to meet the invention of claim 23 does not overcome the rejection. Throughout the briefs appellants attempt to rebut the findings of the examiner by general assertions that the claimed invention is not met without any analysis or support for these positions. The reasonable findings of the examiner cannot be rebutted by general assertions of error without supporting evidence or analysis.

We now consider the rejection of claims 5 and 15 under 35 U.S.C. § 103. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness.

Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

The examiner has indicated how he finds the invention of claims 5 and 15 to be unpatentable over the teachings of Webber and Bigus [answer, pages 5-6]. We find the examiner's findings to be sufficient to establish a prima facie case of unpatentability. Appellants argue that the portion of Bigus relied on by the examiner fails to disclose or suggest resource utilization in the specific context of cost model criteria as claimed [brief, pages 9-10]. The examiner responds by explaining in detail why the collective teachings of Webber and Bigus teach

all the limitations of claims 5 and 15 [answer, pages 8-9]. Appellants respond by broadly asserting that the portions of Bigus relied on by the examiner still fail to disclose or teach the limitations of claims 5 and 15 [reply brief, pages 5-6].

We will sustain the examiner's rejection of claims 5 and 15. As noted above, we find that the examiner has at least established a prima facie case of obviousness. Appellants' broad assertion that the applied prior art fails to teach the claimed invention without any analysis or explanation is insufficient to rebut such a prima facie case of obviousness. As noted above, appellants' general assertions of errors in the examiner's findings are not persuasive of error in the examiner's rejections.

In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-7, 9, 11-17 and 19-23 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

JERRY SMITH)
Administrative Patent Judge)
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LEE E. BARRETT) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
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